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IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

TIM ROCHE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for Writ of Certiorari to the Fourth District Court of Appeal for the State of Florida

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BRIEF AMICUS CURIAE OF WFTV, INC., d/b/a THE PALM BEACH POST AND THE MIAMI HERALD IN SUPPORT OF PETITIONER'S REQUEST FOR A WRIT OF CERTIORARI

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I. INTEREST OF AMICI CURIAE

Amicus WFTV, Inc., d/b/a The Palm Beach Post is a subsidiary of Cox Enterprises, Inc. and operates a television station in Orlando, Florida. WFTV, Inc. also publishes *The Palm Beach Post*, a daily newspaper of general circulation throughout the Palm Beach, St. Lucie, Martin, Okeechobee, Hendry, and Glade counties. *The Palm Beach Post* and the Orlando television station both cover local, state and national business, sports, industry, and judicial and governmental matters.

Amicus The Miami Herald Publishing Company is an unincorporated division of Knight-Ridder, Inc., which publishes *The Miami Herald*, a daily newspaper of general circulation throughout the State of Florida. Knight-Ridder Inc. is a nationwide communications company engaging in the publication of magazines, books, and 28 daily newspapers.

As media broadcasters and publishers of daily newspapers, *Amici* are continuously involved in gathering and reporting the news about matters of public interest, including facts related to judicial proceedings. *Amici* have no financial interest in this case.

The Florida courts punished Petitioner Tim Roche not because he refused to reveal a confidential source, but because he accurately published the contents of a court order. *Amici* are extremely concerned about the effect the holding of the Florida Fourth District Court of Appeal will have upon the freedom of the press to report truthful information about issues of public concern legally obtained from government documents.

Mr. Roche's conviction, sanctioned by the Fourth District Court of Appeal, has far-reaching implications that extend beyond Florida's borders. Allowing states to punish the publication of truthful information from court documents legally obtained by the news media will, as this Court recently recognized in *The Florida Star v. B.J.F.*, 491 U.S. 524 (1989), lead to "self-censorship." If states can punish truthful publication under the guise of their subpoena power, as Florida has done here, they will effectively gut the principle of *Florida Star*.

The decision below will necessarily have a chilling effect on the reporting of truthful information of public concern. Accordingly, *Amici* respectfully file this brief in support of Mr. Roche's Petition for Writ of Certiorari, and urge this Court to consider and resolve the serious and substantial federal question presented by the Petition.[1]

II. STATEMENT OF THE CASE

Amici adopt the Statement of the Case provided by Mr. Roche in his Petition, but wish to emphasize one important fact: the Florida courts improperly intermingled the question of a news reporter's qualified privilege not to reveal the identity of a confidential source with the question of a reporter's right to publish lawfully obtained official information about a matter of public concern.

At the time of Mr. Roche's publication, the ongoing story of the beating death of three-year-old Crystal

[1] *Amici* have obtained written permission from both parties to file this brief. Copies of the letters of consent have been filed with the Clerk in accordance with United States Supreme Court Rule 37.

Lynn McGrath, the prosecution of her parents, Carl and Cheryl Puffinberger, on charges of aggravated child abuse and neglect, the court-ordered termination of Cheryl Puffinberger's parental rights to Crystal's surviving sister, Charlotte May Puffinberger, and the alleged negligence and incompetence of the Florida Department of Health and Rehabilitative Services ("HRS") in connection with the Puffinberger case, had seized the full attention of the community. *See* App. to Petition at 30a-54a.[2] Regardless of how this case was litigated, *see* Petition at 15-20, the unmistakable fact is that the trial court and the Fourth District Court of Appeal each relied, at least in part (and perhaps entirely), on Mr. Roche's *publication* of the trial court order terminating Mrs. Puffinberger's parental rights (the "Termination Order") as the basis for holding Mr. Roche in contempt of court.

This case was not adjudicated as a case of "qualified privilege." The question of "qualified privilege" involves the determination of whether a reporter can be compelled to disclose the identity of a confidential informant or source. *See, e.g., Tribune Co. v. Huff-*

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[2] The Puffinberger case raised serious questions about the competence of HRS. As Mr. Roche points out in his Petition, *see* Petition at 4-5, HRS had been notified of the Puffinbergers' abuse of their child, Crystal, but did not take action to protect her before she was killed as a result of her parents' abuse on November 23, 1988. The community became outraged after learning that the State Attorney was not able to file murder charges against the Puffinbergers because no official was able to determine which parent dealt the fatal blows. *See* App. to Petition at 41a. At least partially as a result of the public pressure brought to bear in the Puffinberger case, HRS formalized its procedures for reviewing child abuse cases after receiving much pressure from the public. *See* App. to Petition at 25a.

stetler, 489 So. 2d 722, 722 (Fla. 1986) ("The issue is whether a reporter, subpoenaed in a state attorney's investigation, has a qualified privilege *against revealing the identity of a source* whose information violated [Florida law.]") (emphasis added). If the Florida courts in this case had only addressed whether Mr. Roche had a qualified privilege, they would have focused only on the identity of Mr. Roche's source and the State's need for such information.[3] But they did not. The Florida courts unconstitutionally based their findings of contempt not on the need to identify the source of the "leak," but on Mr. Roche's initial publication of the Termination Order.

For example, in denying Mr. Roche's motion to quash the subpoena, the trial court faulted Mr. Roche for publishing parts of the Termination Order:

> At this point, if the respondent, Roche, felt aggrieved at the procedure, believed the statute [Fla. Stat. § 39.411] and the Kanarek order unconstitutionally violated the qualified privilege of the press under the First Amendment and that he should not be barred from possession and knowledge of the contents of any order issued, he could immediately address his grievance to Judge Kanarek and if he received an unfavorable result, the Fourth District Court of Appeal is not distant either geographically or procedurally to address his

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[3] *See generally Morgan v. State*, 337 So.2d 951, 955 (Fla. 1976) ("In deciding whether petitioner was privileged to refuse to disclose her source in the present case, we first consider the governmental interest sought to be advanced in compelling disclosure of the confidential informant's identity.").

> grievance. *Roche has shown no great urgency or need to have published the prohibited story* the next day and none appears.
>
> A balancing between the constitutional interest and societal interest as mandated by *Branzburg* indicates that the statutes in question and the Court order involved did not involve private interests or reputation but the protection of an important segment of our society and that integrity for the orders of the courts of competent jurisdiction is absolutely essential and that these interests *far outweigh the constitutional interest of Tim Roche in his publication of said order*[.]

App. to Petition at 13a-14a (emphasis added).[4]

The Fourth District Court of Appeal justified its affirmance of the trial court's adjudication of contempt by saying that Mr. Roche's "publication" was not privileged:

> We conclude, as did the trial judge, that the purposes served by maintaining the confidentiality of juvenile dependency and termina-

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[4] As noted in the Petition, the prosecutor argued to the trial court that Mr. Roche should be punished for publishing the contents of the Termination Order. *See* Petition at 10-11, 17-18. Since then, the State has steadfastly maintained that Mr. Roche's offense was the publication of the Termination Order. In its recent response to Mr. Roche's pending petition for clemency, the State argued that Mr. Roche "voluntarily violat[ed] the law" by "electing to publish[]" portions of the Termination Order, and that his punishment was justified as a result. *See* State of Florida's Response to Petitioner's Request for Waiver of Rules of Executive Clemency and Application for Executive Clemency (August 6, 1992) at 12.

> tion of parental rights proceedings were contravened by *Roche's disclosure of the court order involved herein and that such action* on his part was not qualifiedly privileged.

See In re Investigation: Florida Statute 27.04, Subpoena of Roche v. State of Florida, 589 So.2d 978, 981 (Fla. Dist. Ct. App. 1991) (emphasis added), *pet. for rev. denied*, 599 So. 2d 1279 (Fla. 1992); App. to Petition at 9a.

The orders below speak for themselves. There can be no question that the federal question posed by the Florida courts in their rulings and presently before this Court is whether Mr. Roche may be punished for publishing portions of a widely disseminated but confidential court order which he lawfully obtained. "It is irrelevant to this Court's jurisdiction whether a party raised below and argued [the] federal law issue that the state . . . court actually considered and decided." *Cohen v. Cowles Media Co.*, 111 S.Ct. 2513, 2517 (1990) (citations omitted).

That this truly is a case involving the punishment of a reporter's publication of lawfully obtained information, and not a case dealing with a reporter's qualified privilege to not disclose his confidential source, is further established by the statute that the State was purportedly trying to enforce. The ostensible purpose of the investigation that led to Mr. Roche being subpoenaed was to identify the person or persons who leaked to Mr. Roche a copy of the Termination Order. *See* App. to Petition at 101a (affidavit of Chief Investigator David Powers) (the "investigation has been directed toward finding the source of the 'leaking' of the confidential order to Tim Roche of the Stuart News"). The State supposedly wanted the identity of

that person or persons in order to determine whether such disclosure violated Fla. Stat. § 39.411. *See id.*[5]

However, as the record reveals, the State focused only on Mr. Roche's role in the matter and left other significant leads as to the leak unexplored. Although the State did interview various courthouse and HRS personnel, as well as other persons who might have had information as to the source of the leak, *see* App. to Petition at 64a-95a, the State did not follow up on important leads which it had discovered.[6] Instead, the State chose only to subpoena Mr. Roche and did not effectively pursue any investigations of other HRS personnel, attorneys, or parties who appeared to be promising sources of information for the case.

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[5] The relevant portions of § 39.411 are quoted on pages 2-3 of the Petition.

[6] For example, the State learned that courthouse employee Tammy Franklin had asked for, received, and taken home an unauthorized copy of the Termination Order. *See* App. to Petition at 67a. Yet, the State never asked her whether she had shown her copy to anyone or distributed other copies to those interested. Likewise, the State discovered that a Circuit Court supervisor, Julie Ann Roddenberry-Sherman, also obtained a copy of the Order although she lacked authorization to review it. *See* App. to Petition at 68a. Again, the State did not follow up on this lead or attempt to find out whether Ms. Roddenberg-Sherman discussed the Order with others, shared her copy, or made additional copies.

Furthermore, the State's investigators did not pursue the identity of the HRS employee who they learned made two copies of the facsimile of the Order when it was received in West Palm Beach. *See* App. to Petition at 74a, 90a. Curiously, the State never found the missing facsimile. *Id.* For other examples of the State's cursory investigation, see Petition at 8-10.

A violation of § 39.411 is punishable as a contempt. *See* Fla. Stat. § 39.412. Under Florida law, any statutory violation punishable solely as a contempt has a one-year statute of limitations. *See* Fla. Stat. § 775.15(2)(d). As a result, the State's ability to punish *anyone* for disclosing the contents of the Termination Order to Mr. Roche terminated on May 29, 1991, over a year ago; the State's investigation as to the violation of § 39.411 is closed and the State can have no further purpose or interest under that statute in holding Mr. Roche in contempt of court. A further indication that the investigation of the § 39.411 violation is closed is that the State has disclosed its criminal investigative materials to the public. *See, e.g.*, App. to Petition at 61a-100a. Under the Florida Public Records Act, Fla. Stat. § 119.07(3)(d), all "active" criminal investigative information is exempt from public disclosure.

Had the State only been interested in obtaining the identity of the source of the leak, it would have vacated Mr. Roche's contempt conviction because the statute of limitations for prosecuting the source has run. *See In re Tierney*, 328 So. 2d 40, 47 (Fla. Dist. Ct. App. 1976) ("The purpose for an adjudication of civil contempt with its conditional punishment during a given grand jury term vanishes with the demise of that grand jury. It makes little difference that the sentence or punishment was prevented by the contemnor's exercise of his right to appeal.").[7] The

[7] As Justice Douglas wrote in *Farr v. Pitchness*, 409 U.S. 1243, 1244 (1973) (sitting as Circuit Justice), this Court has held "that just as the power of Congress to commit a recalcitrant witness for civil contempt ends with the adjournment of that Congress, so does the power of the grand jury end when the

State's persistence in keeping Mr. Roche's contempt conviction alive and its repeated unabashed statements regarding Mr. Roche's publication[8] speak volumes about the State's real motivation for prosecuting Mr. Roche.

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grand jury's term expires." *See Shillitani v. United States*, 384 U.S. 364 (1966) (grand jury); *Anderson v. Dunn*, 6 Wheat. (19 U.S.) 204 (1821) (Congress). *Cf. Butterworth v. Smith*, 494 U.S. 624 (1990) (Florida statute prohibiting witness from ever disclosing testimony given before grand jury violates First Amendment insofar as it prohibits witness from disclosing his own testimony after grand jury's term has ended).

[8] On September 18, 1990, at a hearing on Mr. Roche's motion to quash the subpoena, for example, the prosecutor argued that Mr. Roche should be punished because he had received and published portions of the Termination Order:

> What we have here today, Your Honor, is if we allow the press to go behind Judges' orders, to go behind the Florida Legislature and disregard Chapter 39, they simply then can violate the Judge's order a t anytime they choose. *Publish the order because they feel it is in society's interest to publish what the Judge said they could not* [.]
>
> . . . [Mr. Roche and *The Stuart News*] elected to be the ones that could flaunt it in the papers saying it was sealed but *we got it anyway and we published it.* . . . That is serious because it damages the children of this State.

R. 52-53, 59 (emphasis added). During the same proceedings, the prosecutor argued that despite the fact that Mr. Roche received the contents of the Order, he should have challenged "the sealing of the order" before publishing it, "and . . . failed to do so." R. 59.

III. ARGUMENT

A. Mr. Roche Cannot be Punished for Publishing Portions of the Termination Order

Just three years ago, in *The Florida Star v. B.J.F.*, 491 U.S. 524 (1989), this Court once again held that the news media cannot be punished criminally or civilly for the publication of truthful information obtained by lawful means, absent a need to further a state interest of the highest order.[9] Yet the Florida courts below, by upholding his contempt conviction, punished Mr. Roche for publishing portions of a widely disseminated court order which he received lawfully. For the reasons set forth in the Petition, *Florida Star* requires that Mr. Roche's contempt conviction be set aside. *See* Petition at 20-30.

B. This Case Illustrates the Use of a Subpoena to Unconstitutionally Sanction the Press For Truthful Publications

Justice Black, in his concurring opinion in *New York Times v. Sullivan*, 376 U.S. 254, 295 (1964), noted that "it [is] possible to" use legal action as a "technique for harassing and punishing a free press." This Court later warned that

> [o]fficial harassment of the press undertaken not for purposes of law enforcement but to disrupt a reporter's relationship with his news sources would have no justification.

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[9] This Court had made similar rulings in *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97 (1979), *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829 (1978), *Oklahoma Publishing Co. v. District Court*, 430 U.S. 308 (1977), and *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975).

Branzburg v. Hayes, 408 U.S. 665, 707-08 (1972) (plurality opinion). *See also id.* at 709-10 (Powell, J., concurring). Empirical evidence, legal opinions, treatises, and other major newsworthy events have illustrated that government officials have used and continue to use the press subpoena as a means of punishing the publication of sensitive information.

The use of press subpoenas as a means to harass or punish the press stems back to colonial times.[10] Such use of subpoenas to compel the disclosure of confidential sources and discourage aggressive reporting became a widespread problem when the press was informing the public on topics relevant to political decision-making in the late 1960s and early 1970s.[11]

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[10] As Mr. Roche noted in his Petition at 20 n.16, an early controversy in 1722 involved Benjamin Franklin's older brother, James, who was the publisher of the *New England Courant*. *See* Ervin, *In Pursuit of a Press Privilege*, 11 Harv. J. on Legis. 233, 234 (1974). Nearly a century later, in 1812, Congress issued one of its first contempt citations to Nathanial Rounsevell, an editor for *The Alexandria Herald*. *See* "A Dirty Job, and Many Don't Want to Do It: Conflicts, Magnitude of Challenge and Potential for Press Limits Choices for Special Counsel to Probe Leaks," *The Recorder*, Nov. 8, 1991, at p.2. Mr. Rounsevell had declined to disclose his source of a leak from an executive session of the House of Representatives. *Id.* In 1848, John Nugent, a reporter for the *New York Herald*, was held in the Capitol for one month by the Senate in an effort to force him to reveal his source for a story. *Id.*

[11] For example, reporters who published news reports regarding the investigation of the Watergate break-in were subpoenaed by the Committee to Re-Elect the President. A district court, however, quashed the subpoenas because the Committee had failed to demonstrate a compelling and overriding interest in the information sought. *Democratic Nat'l Comm. v. McCord*, 356 F.Supp. 1394, (D.D.C. 1973).

When the status quo was threatened by public knowledge of corrupt or inept government practices and policies, the normal tension between the government and the press intensified into bitter hostility. Press subpoenas became a government weapon aimed at restricting the press from acquiring and disseminating important information. *See* Swierzbinski, *The Newsperson's Privilege and the Right to Compulsory Process-Establishing an Equilibrium*, 48 Fordham L. Rev. 706, 706-07 (1980) (providing examples of the government's abuse of the subpoena power as a means to punish and intimidate reporters from disseminating truthful information).

The 1969 trial of the "Chicago Seven" provided a glimpse of the growing use of press subpoenas. The United States Government subpoenaed four major Chicago newspapers and three television networks for their notes, film footage, rough drafts, stories, and other materials connected with the Democratic Convention. *See United States v. Dellinger*, 472 F.2d 340 (7th Cir. 1972), *cert. denied*, 410 U.S. 970 (1973).

The frequency of press subpoenas increased during the Nixon administration. In the first 30 months of that administration, 30 subpoenas were served on *The Chicago Sun Times* and *The Chicago Daily News*, two-thirds of which were on the Government's behalf. *See Newsman's Privilege: Hearings on S.36, S.158, S.318, S.451, S.637, S.750, S.870, S.917, S.1128 and S.J.Res.8 Before the Subcommittee on Const'l Rights of the Senate Comm. on the Judiciary*, 93rd Cong., 1st Sess. 553 (1973) (Statement of Rep. Abzug). One reporter was served in 11 separate proceedings within a year and a half. During the same two and a half years,

NBC and CBS were subpoenaed 124 times by federal and state prosecutors, as well as by defendants. *Id.*[12]

The passage of time has not lessened the zeal of government entities to use subpoenas in an attempt to muzzle the media. Recent public controversies provide disturbing examples of government officials attempting to punish publications through use of the subpoena power.

For example, reporter Tom Brandt of *The Washington Times* was subpoenaed and commanded to appear before the House Ethics Committee after revealing that Geraldine Ferraro was under congressional investigation for alleged violations of House financial disclosure rules. "Adjourned Subpoena," *N.Y. Times*, Dec. 20, 1984, at A31, Col. 5. After some editorials criticized the Senate's action and civil liberties groups objected, the Committee adjourned the subpoena and decided not to proceed with the contempt action. *Id.*

As some commentators have noticed, the vast majority of subpoenas seeking to compel the disclosure of confidential sources are nothing more "than a witch hunt." *See* "A Dirty Job, and Many Don't Want to Do It: Conflicts, Magnitude of Challenge and Potential For Press Limits Choices for Special Counsel to Probe Leaks," *The Recorder*, Nov. 8, 1991, at p. 2. These commentators contend that government officials conduct investigations such as the one involving Mr.

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[12] *Amici* have learned that Mr. Roche himself has received four subpoenas since 1990, three of which have been issued by the State Attorney's office prosecuting him in the matter before this Court.

Roche for reasons "that have nothing to do with finding a leaker." *Id.*

Each time a subpoena is issued against a reporter to compel disclosure of a source, "there is a significant risk that the motivation for the [subpoena] is not, or not only, enforcement of the criminal laws or vindication of reputation, but either punishment of the press for publishing the information, or exposure of the source for similar retributive purposes." Langley & Levine, *Branzburg Revisited: Confidential Sources and First Amendment Values*, 57 Geo. Wash. L. Rev. 13, 18 (1988).

The danger to First Amendment freedoms posed by press subpoenas is illustrated in a recent study conducted by The Reporter's Committee for Freedom of the Press, a voluntary association of working reporters and editors dedicated to defending the First Amendment and the freedom of information interests of the news media. This study discusses the use of press subpoenas by state officials as a means to intimidate new organizations and discourage the publication of certain information. *See* Reporter's Committee for Freedom of the Press, *Agents of Discovery: A Report on the Incidents of Subpoenas Served on the News Media in 1989*, at 14-15 (1991). The report concluded that unbridled subpoena power either deters sources from divulging information or discourages reporters from publishing or gathering information of significant community concern. *Id.* at 15.

Amici bring the foregoing examples to the Court's attention in order to highlight the fact that the State's method of punishing Mr. Roche via subpoena in this case is not an uncommon or isolated phenomenon. Mr. Roche became the State's sole target for punish-

ment due to the Termination Order's publication and the State attempted to get around the clear mandate of *Florida Star* by issuing a subpoena, purportedly to compel disclosure of Mr. Roche's source. To this day, the State is pursuing the contempt conviction even though the applicable statute of limitations for the underlying violation of § 39.411 has run.

C. The Media in the State of Florida Continue to be Punished and Harassed for the Publication of Truthful Information Despite the Holding in *Florida Star*

Despite the clear holding in *Florida Star* in 1989, the media throughout the state of Florida continue to be burdened by lawsuits or subpoenas seeking to punish the reporters for publicizing truthful information which was lawfully obtained.[13]

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[13] The Brechner Center of the University of Florida is currently conducting a survey regarding the impact and widespread use of press subpoenas throughout the state of Florida. The Brechner Center distributed surveys to approximately 125 different media organizations in the State of Florida inquiring, among other things, about the frequency and types of subpoenas received from government officials and other entities. As a point of reference, the Brechner Center decided to focus on the number of subpoenas issued 21 months before and after the Florida Supreme Court's decision in *Miami Herald Publishing Co. v. Morejon*, 561 So.2d 577 (Fla. 1990) (upholding the contempt conviction of reporter who was an eyewitness to a public police search and arrest of a criminal defendant and who had refused to comply with a subpoena which compelled him to reveal the information he gathered during his observations). The Brechner Center wished to analyze the effect that this recent decision would have on government officials' use of press subpoenas.

Remarkably, in its preliminary findings, The Brechner Center found that since *Morejon* there has been a 70 percent increase in the number of press subpoenas issued to the different media organizations throughout the state of Florida. *See* Brechner Cen-

One recent example of government abuse of the media for publishing truthful information was the infamous case involving the alleged rape that occurred at the Kennedy estate in Palm Beach, Florida. During the investigation several media organizations, including *The New York Times*, NBC News and *The Globe*, a newspaper owned and published by Globe International, Inc., published the name of the alleged rape victim. Even though the victim's identity was already widely known in Palm Beach and had been published in a British tabloid available for sale on newsracks in Palm Beach, the State of Florida filed a criminal summons and information against Globe Communications Corp. (the parent company of Globe International, Inc.) charging it with two counts of violating Fla. Stat. § 794.03 for identifying the alleged victim of the sexual assault. The *New York Times* and NBC were also threatened with prosecution by the Palm Beach County State Attorney.

Remarkably, the statute that the State of Florida seeks to enforce against Globe Communications, Inc. is precisely the same provision which was at issue in *Florida Star*. After a three day evidentiary hearing, the motion of *The Globe's* to dismiss the summons and information was granted by the trial court. The State nevertheless has appealed the decision and the case is still pending before Florida's Fourth District Court of Appeal, the very tribunal that affirmed Mr. Roche's contempt conviction.

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ter of the University of Florida, *Preliminary Report on Survey Regarding Press Subpoenas in the State of Florida*, at 3 (Sept. 21, 1992) (available at The Brechner Center at the University of Florida). The Brechner Center is hoping to conclude its survey report by mid-October, 1992.

Another Florida example involves a pending invasion of privacy suit arising out of newspaper coverage of a custody battle between prospective adoptive parents and the child's biological father. On July 17, 1992, Mr. and Mrs. Kenneth Rosenblatt brought an action in Palm Beach County Circuit Court for invasion of privacy pursuant to Fla. Stat. § 63.162(4) against *The Lakeland Ledger*, a daily newspaper of general circulation. *The Lakeland Ledger* published a truthful news report about the case based in part on lawfully obtained information provided by a confidential source from court documents.

The Rosenblatts now seek to punish *The Ledger* for having published allegedly private information about the case obtained from the allegedly confidential court records. Again, the facts of this case seem peculiarly similar to those presented in *Florida Star*, *Oklahoma Publishing*, *Cox*, *Daily Mail*, and *Landmark Communications*, where this Court repeatedly held that the media could not be punished for the respective publications.

IV. CONCLUSION

The Fourth District Court of Appeal's decision in this case squarely conflicts with this Court's decisions holding that a State may not, absent an interest of the highest order, punish someone for publishing truthful information that is lawfully obtained. The State of Florida should not be permitted to ignore the holdings of cases like *Florida Star* by issuing a subpoena ostensibly to obtain the identity of a source but for the real motive of punishing the reporter for having published a story. Neither the State nor the Fourth District Court of Appeal have offered any jus-

tification for ruling that Florida's interest in punishing publications such as the one by Mr. Roche is of greater significance than the state interests asserted and found wanting in *Cox*, *Landmark*, *Daily Mail*, *Oklahoma Publishing*, or *Florida Star*.

Amici urge this Court to grant certiorari in this case and summarily reverse the ruling of the Fourth District Court of Appeal.

Respectfully submitted,

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